IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5166 of 2004

with

CIVIL APPLICATION NO.9140 OF 2002

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Petitioner(s)
Versus
CHAMPAKLAL GORDHANDAS TRIVEDI - Respondent(s)

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Appearance :
NR UDAY R. BHATT, AGP for Petitioner
MR MD RANA for Respondent

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 12/07/2006

ORAL JUDGMENT

1. By this petition under Article 227 of the

Constitution of India, the State of Gujarat through its Health & Medical Services & Medical Education Department, challenges the order dated 30th June, 2000 passed by the learned Extra Assistant Judge, Gondal in Civil Miscellaneous Application No.27 of 1998, seeking condonation of delay of 868 days caused in preferring appeal against the judgment and decree dated 10th January, 1996 passed in Regular Civil Suit No.208 of 1995 by the learned Civil Judge [S.D.] - Gondal.

2. The facts emerging from the record of the case are that the respondent, an employee of the erstwhile Gondal State, was working as Vaccinator since 1946. Subsequently, he was absorbed in the Government service in the Health Division of the Health & Family Welfare Department of the State Government. Pursuant to a charge sheet dated 9th September, 1969, departmental inquiry was initiated against the respondent, which culminated into an order dated 19th June, 1973 whereby the respondent was exonerated from the charges.

3. As the respondent had not been granted promotion to the post of Sanitary Inspector during the pendency of the departmental inquiry, the respondent instituted a suit before the Civil Judge (S.D.), Junagadh being Regular Civil Suit No.76 of 1974. The said suit was decreed by an

order dated 30th November, 1979. It appears that, pursuant to the decree, by an order dated 17th November, 1987, the respondent was given deemed date of promotion with effect from 12th February, 1966 instead of the date of actual promotion which was 17th September, 1973. In the meanwhile, the respondent had filed execution proceedings which culminated into an order dated 17th November, 1988 upon satisfaction of the decree.

4. The respondent retired from service on 31st October, 1983. It is the say of the petitioner that the respondent had throughout served under the Health Department of the State Government. However, in the year 1995, the respondent instituted a suit being Regular Civil Suit No.208 of 1995 against the State of Gujarat through its Panchayat Department contending that, pursuant to the decree passed in the Regular Civil Suit instituted by him, the defendants were required to give effect to the judgment and benefits of fixation of pension and gratuity, however, no action had been taken by the defendant.

5. It appears that summons in the said suit was issued against the Panchayat Department which failed to enter appearance pursuant to the said summons. In the absence of any appearance on behalf of the State, the suit was decreed by

order dated 10th January, 1996 in favour of the respondent in the following terms :

> *"It is hereby declared that the Government is directed to revise the fixation of proper seniority in the cadre and grant him the benefit of difference of arrears and pay him the pension, gratuity and PF on revised rate and give effect to the Judgment of the Court."*

6. It appears that, pursuant to the said decree, execution proceedings were initiated by the respondent against the Panchayat Department and it was only during the course of execution proceedings that the concerned Department, namely, the Health Department was informed about the passing of the decree in Regular Civil Suit No.208 of 1995.

7. Thereafter, the petitioner preferred appeal against the judgment and decree dated 10th January, 1996 passed by the Civil Judge (S.D.), Gondal before the Extra Assistant Judge, Rajkot District, at Gondal. The petitioner also preferred Civil Miscellaneous Application under Section 5 of the Limitation Act, seeking condonation of delay of 868 days caused in preferring the appeal against the judgment and decree passed in Regular Civil Suit No.208 of 1995.

8. By the impugned order dated 30th June, 2000, the

learned Extra Assistant Judge, Gondal, rejected the aforesaid application, which gives rise to the present petition.

9. Heard Mr.U.R.Bhatt, learned Assistant Government Pleader on behalf of petitioners and Mr.M.D.Rana, learned advocate on behalf of respondent.

10. The learned Assistant Government Pleader has submitted that delay in preferring the appeal against the judgment and decree passed in Regular Civil Suit No.208 of 1995 had occurred for the reason that the petitioners were not at all aware of the proceeding before the Civil Judge (S.D.), at Gondal as the respondent had wrongly impleaded the Panchayat Department as the defendant. That, it was only during the course of execution proceedings that the petitioner Department was informed by the Panchayat Department regarding the judgment and decree passed in the aforesaid suit and that, thereafter, the petitioner had immediately preferred the appeal before the learned Extra Assistant Judge, at Gondal.

11. It was submitted that the learned Judge has erred in not appreciating the fact that, on account of reasons beyond its control, the petitioner was not in a position to prefer the appeal within the period of limitation. That,

the petitioner was not impleaded as a party in the said proceeding, and as such, it was not aware of the very institution of the said proceeding. It was submitted that, in the aforesaid premises, no fault can be attributed to the petitioner for not preferring the appeal within the period of limitation, and that, there was no negligence on part of the concerned Department for the delay caused in filing the appeal. It was submitted that, in the circumstances, as the petitioner was prevented from preferring appeal within the period of limitation due to circumstances beyond its control, the learned Judge ought to have condoned the delay in preferring the appeal and decided the appeal on merits. It was submitted that the petitioner had a very good case on merits and that the learned Judge had erred in throwing out a meritorious matter at the threshold, thereby defeating the cause of justice. It was submitted that, in the circumstances, the impugned order is required to be quashed and set aside, and that the delay in preferring the appeal is required to be condoned.

12. Learned Advocate Mr.Rana for the respondent vehemently opposed the petition and submitted that the Government was duly served; may be through the Panchayat Department, however, it cannot be said that the Government was not aware

of the suit. It was submitted that the Panchayat Department was duty bound to appear and to reply to the summons. That the Panchayat Department ought to have appeared in reply to the summons and pointed out to the Court that the summons had wrongly been served on the Panchayat Department or in the alternative, the Panchayat Department ought to have informed the State Government that the respondent is not an employee of the Panchayat Department. That the Panchayat Department being a part of the establishment of the State Government, it cannot be said that the State Government was not served. It was submitted that whichever be the department concerned, ultimately it was the State Government which was the defendant, hence, the suit was rightly decreed ex-parte as the State Government did not choose to enter appearance. That evidently, there was inaction on part of the officers of the Panchayat Department, hence, the State Government through the Health Department cannot be heard to say that it was not aware of the proceedings of Regular Civil Suit No.208 of 1995.

13. It was submitted that the Court has exercised its discretion while rejecting the application under Section 5 of the Limitation Act reasonably, and as such, this Court, while exercising powers under Article 227 of the Constitution, would normally not interfere with

such exercise of discretion. It was submitted that it was only in case there was any perversity in the order of the Lower Court that this Court should interfere, however, no ground of perversity has been made out on behalf of the State Government, hence, no interference is warranted at the hands of this Court. It was submitted that the learned Judge has recorded that no explanation for condoning the delay has comeforth. It was submitted that, when no jurisdictional error has been pointed out, this Court would be loath to interfere with the order of the Appellate Court.

14. Reliance was placed upon a decision of this Court in the case of *Range Forest Officer v. Kantilal Bhimji Mori* rendered in Special Civil Application No.5119 of 2004 on 26th April, 2004 for the proposition that, in case of inordinate unexplained delay, the Court cannot shut its eyes to the negligence or sluggishness of the Government machineries, and that the delay cannot be considered to be within the reasonable limits. It was submitted that there was no inherent lack of jurisdiction so as to call for interference under Article 227 of the Constitution, hence, the petition is required to be rejected.

15. In rejoinder, the learned Assistant Government Pleader submitted that the impugned order was

bad on the ground of perversity. It was submitted that various contentions were raised before the learned Extra Assistant Judge, however, the same had not been dealt with, rendering the order perverse. It was submitted that substantial justice is required to be done; that when the concerned Department was not impleaded as a party respondent, and it had come forward with an explanation giving satisfactory reasons for the delay caused in preferring the appeal, the learned Judge ought not to have rejected the application. It was submitted that, in the interest of public and public policy, this Court may interfere and condone the delay.

16. As is apparent from the facts of the case, the respondent was serving with the State Government. Though a dispute had been raised as to whether he was an employee of the Health Department or the Panchayat Department of the State Government, it is apparent from the record that the earlier civil suit being Regular Civil Suit No.76 of 1974 was instituted in the Court of the Civil Judge (S.D.), Junagadh against the State Government through its Health Department. The said suit was instituted by the respondent, and it was the respondent who had impleaded the Health Department of the State Government as the concerned respondent. The said judgment was decreed on 30th November, 1979; the respondent

retired on 31st October, 1983; the execution proceedings arising from the aforesaid decree culminated into an order dated 17th November, 1988.

17. Subsequently, after considerable delay, i.e., almost 7 years after the order passed in the execution proceedings and almost 16 years after the judgment and decree passed in Regular Civil Suit No.76 of 1974, the respondent instituted another suit being Regular Civil Suit No.208 of 1995 before a different forum i.e. before the Civil Judge (S.D.), Gondal impleading the State Government through the Panchayat Department as defendant. It may be pertinent to note that the reliefs prayed for in Regular Civil Suit No.208 of 1995, as is evident from the judgment and decree dated 10th January, 1996, are to the effect that effect be given to the judgment passed in the earlier civil suit.

18. In the earlier civil suit, when it was the Health Department which had been impleaded as the defendant, it is beyond comprehension as to why, in a subsequent suit seeking relief to the effect that the earlier judgment be given effect to, the respondent has thought it fit to implead the State Government as a defendant through a different Department.

19. The respondent being an employee of the State

Government would be well aware of the manner of functioning of the State Government. Despite the fact that essentially the reliefs in the Suit are sought against the Health Department of the State Government, the Panchayat Department of State Government is joined as defendant, which has resulted into the suit being decreed exparte as the Panchayat Department which was not the concerned Department, did not bother to enter appearance pursuant to the summons issued by the Court.

20. It is true that it cannot be said that there is no fault on part of the Panchayat Department. Any Department of the State Government, when it receives a summons from a Court, is required to enter appearance pursuant to the said summons. However, this does not absolve the respondent from his responsibility to implead the correct Department as a defendant when he being a Government employee would be fully aware of the manner of functioning of the various Departments of the State Government. The respondent cannot be permitted to take advantage of his own wrong and throw the burden on the State Government to correct the error made by him.

21. It is common knowledge, and more particularly, the respondent being a servant of the State Government would be aware of the fact that, under the administrative set up of the

Government, the Government functions through various Departments, each being a distinct unit. However, a specious plea has been raised that when the State Government was a party to the suit, may be through the Panchayat Department, it was the duty of the State Government to come forward and point out as to which was the correct department that should have been impleaded as party defendant; that it was the duty of the Panchayat Department to inform the proper Department as regards the institution of the suit, which has been accepted by the Appellate Court. When it is the respondent / plaintiff who knowing full well that it was the Health Department which was the concerned Department, impleaded a wrong Department as a defendant for reasons best known to him, he cannot be permitted to wriggle out of his responsibility by throwing the onus on the State Government for the default on his part.

22. It is true that there is a considerable delay of 868 days caused in preferring the appeal, the delay also is not very well explained, as no specific dates are set out. However, in the facts of the present case, where the respondent has himself approached the Court in 1995 for giving effect to the judgment and decree dated 30th November, 1979, without giving any explanation as regards the delay in instituting the suit, it cannot be said that the delay of

868 days caused in preferring the appeal, is not reasonable.

23. The Apex Court has time and again held that, insofar as the Government is concerned, certain amount of latitude is not impermissible. In the case of *G. Ramegowda, Major v. Special Land Acquisition Officer, Bangalore*, (1988)2 SCC 142, the Apex Court held thus;

> *"15. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.*
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> *16. The law of limitation is, no doubt, the same for a private citizen as for Governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.*
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> *17. Therefore, in assessing what, in a particular case, constitutes 'sufficient cause' for purposes of Section 5 it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Governmental decisions are proverbially slow encumbered,*

as they are, by a considerable degree of procedural redtape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have 'a little play at the joints'. Due recognition of these limitations on Governmental functioning - of course, within a reasonable limit - is necessary if the judicial approach is not rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision making process."

24. The decision of this Court, upon which reliance has been placed on behalf of the respondent, does not carry the case of the respondent any further as the said decision was rendered in the facts of the said case wherein the Court had come to a specific conclusion that the petitioners had not approached the Court with correct facts and not even with clean hands. The Court had found that there was no attempt to explain the delay for non-movement of files for months together and that, therefore, the Court should not shut its eyes to such negligence or sluggishness in the Government machinery.

25. As can be seen from the impugned order dated 30th June, 2000, the main reason for rejecting the application is that the Court was not satisfied with the explanation given by the petitioner that the petitioner was not aware about the filing of the Regular Civil Suit

No.208 of 1995 as the Panchayat Department had been impleaded as a defendant and the said Department did not inform the concerned Department about the filing of the suit as well as the passing of the impugned judgment and decree dated 10th January, 1996. The Court has found that it was the duty of the Panchayat Department to inform the Government to contest the suit, but for the reasons best known to the Panchayat Department, it had failed to inform the Government to contest the suit. The Court was in agreement with the submissions made on behalf of the respondent that there was inaction on part of the officers of the Panchayat Department. The Court was of the view that that when the State Government was made a party to the suit and when summons was served to the State Government through the Panchayat Department, it cannot be said that the impugned judgment and decree was not within the knowledge of the State Government. The Court held that whether respondent was an employee of the Panchayat Department or Health Department was a question to be decided by the Government and the Government ought to have applied before the Civil Court for joining proper and necessary party to the suit.

26. The aforesaid findings given by the learned Extra Assistant Judge are not in consonance with the facts of the case resulting in improper

exercise of jurisdiction. From the facts on record, it is clear that the initial suit was instituted against the State Government in its Health Department; in the subsequent suit the relief sought was to give effect to the judgement and decree passed in the earlier suit. There could, therefore, not have been any dispute as to whether the respondent was an employee of the Panchayat Department or the Health Department. Hence, no occasion arose for the State Government to decide the said issue. Moreover, the Court ought not to have turned a blind eye to the fact that the respondent who himself was aware of the proper department had for reasons best known to him chosen to join the wrong department as a party. The conduct of the respondent also cannot be said to be above board. It is for the plaintiff in a suit to implead the proper and correct party as defendant in the suit. The petitioner department cannot be made to bear the brunt of the default on the part of the respondent-plaintiff. In these circumstances, the conclusions arrived at by the learned Extra Assistant Judge can be said to be perverse. The learned Judge was, therefore, not justified in rejecting the application under Section 5 of the Limitation Act.

27. The Apex Court has in the case of *Achutananda Baidya v. Prafullya Kumar Gayen,* (1997)5 SCC 76,

laid down thus:

> *"[10] The power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the Courts and Tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere under Art. 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior Court, the High Court should not quash the judgment of the sub-ordinate Court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate Court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse.*
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> *[11] If the evidences on record in respect of a question of fact is not at all taken into consideration and without reference to such evidence, the finding of fact is arrived at by inferior Court or Tribunal, such finding must be held to be perverse and lacking in factual basis. In such circumstances, in exercise of the*

jurisdiction under Article 227, the High Court will be competent to quash such perverse finding of fact."

In the facts of the present case, despite there being evidence on record to show that the Health Department was the proper department, the learned Judge has, without reference to such evidence, recorded incorrect findings of fact. In the circumstances, this Court, in exercise of jurisdiction under Article 227 of the Constitution is competent to interfere.

28. The Apex Court in the case of *N.Balakrishnan v. M.Krishnamurthy*, (1998)7 SCC 123, wherein there was a delay of 883 days on the part of the defendant-appellant in approaching the Court against dismissal of his application to set aside ex-parte decree against him, held as follows:

"[9] It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise

of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammeled by the conclusion of the lower Court.

[10] The reason for such a different stance is thus : The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

[11] Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

[12] A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There

is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, AIR 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Muni-cipality, AIR 1972 SC 749.

[13] It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant the Court shall compensate the opposite party for his loss."

29. Considering the principles enunciated in the aforesaid decision, this Court would be free to consider the cause shown for the delay afresh and come to its own finding, unhampered by the conclusion of the Lower Court. In the circumstances, the contention raised on behalf of the respondent that this Court should not interfere with the discretion exercised by the Lower Court does not merit acceptance. However, following the salutary guideline laid down by

the Apex Court in the said decision, namely that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss, while allowing the petition, it is deemed fit to award costs in favour of the respondent.

30. For the afore stated reasons, the petition succeeds. The impugned order dated 30th June, 2000 passed in Civil Miscellaneous Application No.27 of 1998 by the learned Extra Assistant Judge, Gondal is hereby quashed and set aside. The delay of 868 days in approaching the Court of the Extra Assistant Judge, Gondal against the ex-parte judgment and decree dated 10th January, 1996 passed in Regular Civil Suit No.208 of 1995 is hereby condoned on the condition that the petitioner shall pay a sum of Rs.5,000/- [Rupees five thousand] to the respondent within a period of two months from the date of receipt of a copy of this order.

31. Considering the fact that the respondent herein is a Senior Citizen, aged about 86 years, in the interest of justice, it is deemed fit and proper to direct that the learned Extra Assistant Judge, Gondal to decide the appeal as expeditiously as possible and in any case, within a period of six months from the date of receipt of a copy of this order. It is clarified that while deciding the appeal, the

lower Court shall not be influenced by any of the observations made in this order.

32. The petition is allowed. Rule is made absolute accordingly. Civil Application stands disposed of.

33. Considering the fact that the Panchayat Department, though served, not only did not bother to appear before the trial Court, but was further negligent by not even informing the Health Department regarding the receipt of the summons, which resulted in an ex-parte decree being passed, it would be expedient on the part of the State government to determine the liability of the officers who were responsible for the aforesaid situation.

[HARSHA DEVANI, J.]

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